

Exhibit 35

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
SOUTHERN DIVISION

BETHESDA SOFTWARE LLC

.

vs.

. DOCKET 09-CV-2357

INTERPLAY ENTERTAINMENT

. GREENBELT, MARYLAND

. AUGUST 4, 2011

TRANSCRIPT OF PRELIMINARY INJUNCTION HEARING
BEFORE THE HONORABLE DEBORAH K. CHASANOW
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S

FOR THE PLAINTIFFS:

HOWARD H. STAHL, ESQ.
JOSEPH L. LOBUE, ESQ.

FOR THE DEFENDANTS:

GEOFFREY T. HERVEY, ESQ.
JEFFREY F. GERSH, ESQ.

Court Reporter:

Sharon O'Neill, RMR
Official Court Reporter
United States District Court
6500 Cherrywood Lane
Greenbelt, Maryland 20770

1 that the balance of equities tips in favor of plaintiff, and
2 that the injunction is in the public interest.

3 The question of likelihood of success is obviously
4 complex in any case, but particularly so in this one, involving
5 the claim of copyright infringement. While there is no doubt
6 that the Plaintiff owns the copyrights, and I believe there is
7 no doubt that, well, that Interplay concedes that in some
8 fashion it's using them in the development of the Fallout MMOG
9 because it believes it has the right to do so.

10 Beyond that, however, things get very, very
11 complicated. First, there is the contract interpretation
12 question, beginning, of course, with the documents themselves,
13 and the law. I believe we've agreed it's Delaware law that
14 we're applying, based on the agreements themselves, and whether
15 the fact finder ultimately goes beyond just the language there.

16 We've had a discussion in the context of the Motion
17 to Dismiss as to where we are at that point. If the fact
18 finder goes beyond the four corners of the two documents, how
19 far beyond, whether it's the License Agreement that was
20 superseded, or whether the fact finder gets beyond that
21 obviously makes things much, much more complex.

22 I will acknowledge that I believe the Plaintiff has
23 some chance of success. How much is hard to quantify. The
24 Asset Purchase Agreement makes clear that the copyrighted
25 material was sold, and the Trademark License Agreement at best